

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

MICHAEL RAY ESQUIVEL,)
)
 Plaintiff,)
)
 vs.) No. CIV-12-190-C
)
MICHAEL J. ASTRUE,)
Commissioner of Social Security)
Administration,)
)
 Defendant.)

ORDER AFFIRMING REPORT AND RECOMMENDATION

This action for judicial review of the Commissioner's denial of disability insurance benefits was referred for initial proceedings to United States Magistrate Judge Gary M. Purcell, consistent with 28 U.S.C. § 636(b)(1)(B). Judge Purcell entered a Report and Recommendation on January 24, 2013, recommending that the decision of the Commissioner be affirmed. Plaintiff, through counsel, has timely filed an Objection to this report, and the Court therefore considers the matter de novo.

Plaintiff's Objection is that the ALJ erred in finding personality disorder at Step 2 of the sequential process, rather than affective disorder. All parties agree that there was not substantial evidence to conclude affective disorder was not a serious impairment (although certainly there was substantial evidence of personality disorder, as well). What Plaintiff's Objection fails to acknowledge, however, is that the functional limitations required to support

a listing are identical for personality and affective disorders. Plaintiff has not challenged the ALJ's conclusions in this regard, and the failure to include affective disorder at the Step 2 analysis is therefore harmless error.

Accordingly, the Court adopts and affirms, in its entirety, the Report and Recommendation of Judge Purcell, and for the reasons stated therein, the decision of the Commissioner in this case is affirmed. A judgment will enter accordingly.

IT IS SO ORDERED this 7th day of March, 2013.



ROBIN J. CAUTHRON
United States District Judge